

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

RONDIGO, LLC, a Michigan limited liability company, DOLORES MICHAELS aka NICOLINA A. MICHAELS and RENEE MICHAELS,

Plaintiffs,

Case Number: 08-10432

v.

TOWNSHIP OF RICHMOND, MICHIGAN, a Michigan municipal corporation, GORDON FUERSTENAU, in his official and individual capacities, THE FOUR TOWNSHIP CITIZENS' COALITION, INC., a Michigan nonprofit corporation, JARED SLANEC, KRISTYN SALANEC, JOHN GIANNONE, SARA GIANNONE, SALVATORE GIANNONE, NANCY GIANNONE, BILLY TRAVIS, MARLENE TRAVIS, THOMAS MACKLEY, PAULA MACKLEY, MICHAEL SYLVESTRY, MICHAEL LOCK, KARLA SITEK, ROBERT GRUCZ, LESTER SOVA, DEVON SLANEC, ANNETTE NORMAN, ANGELA M. JOBS, JOHN REY, JUDITH REY, LINDA GERHARD, WAYNE WHITMAN, in his individual capacity, STEVEN MAHONEY, in his individual capacity, TERESA SEIDEL, in her individual capacity, MATTHEW FLETCHER, in his individual capacity, and ANNE HOKANSON, in her individual capacity, jointly and severally,

DISTRICT JUDGE JOHN FEIKENS
MAGISTRATE JUDGE STEVEN D. PEPE

Defendants.

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**ORDER GRANTING DEFENDANTS' MOTION
TO REINSTATE STAY OF PROCEEDINGS (DKT. #102)**

On June 16, 2009, Defendants, Four Township Citizens' Coalition, Inc., Jared Slanec, Kristyn Slanec, John Giannone, Sara Giannone, Salvatore Giannone, Nancy Giannone, Billy Travis, Marlene Travis, Thomas Mackley, Paula Mackley, Michael Silvestri, Michael Lock,

Karla Sitek, Robert Grucz, Devon Slanec, Annette Norman, Angela M. Job, and Linda Gerhardt moved for an order reinstating the stay of discovery in this matter until such time as the Court renders a decision on the Township Defendants' dispositive motion and until the objections to the opinion and recommendation on the State Defendants' Motion has been decided (Dkt. #102). The State Defendants and the Township Defendants have each filed a notice of concurrence with the present motion (Dkt. #103 & #104). All pre-trial matters have been referred in accordance with the authority conferred under 28 U.S.C. § 636(b) (Dkt. #63). For the reasons indicated below and stated in this Court's November 5, 2008, and December 12, 2008, Orders (Dkt. #80 & #90), the Defendants' motion is **GRANTED**, and all discovery requests in this case are stayed.

On November 5, 2008, the Court stayed all proceedings pending its decision on a Motion to Dismiss and Motion Summary Judgment filed by Defendants Anne Hokanson, Matthew Flechter, Teresa Seidel, Steven Mahoney, and Wayne Whitman (hereinafter "State Defendants") (Dkt. #80). On November 10, 2008, Defendants Richmond Township and Gordon Fuerstenau (hereinafter "Township Defendants") filed their Motion to Dismiss and Motion for Summary Judgment (Dkt #81). On March 31, 2009, the undersigned issued a Report and Recommendation that the State Defendants' motion be granted in part and denied in part, and that the stay in this matter be lifted (Dkt. #95). Objections were subsequently filed to this Report and Recommendation, and as of this date have not been resolved. Today, the undersigned issued a Report and Recommendation that Defendants Richmond Township and Gordon Fuerstenau's motion be granted and alternatively that Gordon Fuerstenau is entitled to qualified immunity.

Although the parties appear to believe that the stay was lifted with the issuance of the March 31, 2009, Report and Recommendation, that opinion did not lift the stay. Rather, it

“**RECOMMENDED** that the stay of discovery issued in this case be lifted” because the undersigned recommended that a portion of the State Defendants’ dispositive motion be denied and that this case proceed to discovery (Dkt. #95, p. 43). Accordingly, the stay in this case is in effect until such time as Judge Feikens rules on the pending objections and issues a final order on the State Defendants’ dispositive motion.

In the present motion, Defendants also ask that the stay be maintained until such time as the Court renders a final decision on the Township Defendants’ dispositive motion. The Report and Recommendation issued today recommend dismissal of the Township defendants and that Defendant Gordon Fuerstenau is entitled to qualified immunity. In a suit for money damages against government officials based on their official acts, discovery should not be allowed before the threshold issue of immunity is resolved. *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Because qualified immunity is immunity from suit rather than a mere defense to liability, discovery should be suspended until Judge Feikens has an opportunity to enter a final order regarding the Report and Recommendation issued this date on the Township Defendants’ dispositive motion based in part upon immunity. *Washington v Stark*, 626 F. Supp. 1149, 1152 (W.D. Mich. 1986).

The parties to this action may object to and seek review of this Order, but are required to file any objections within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1) and E.D. Mich. LR 72.1(d)(2). Within ten (10) days of service of any objecting party’s timely filed objections, the opposing party may file a response.

SO ORDERED.

Dated: June 24, 2009
Ann Arbor, MI

s/Steven D. Pepe
United States Magistrate Judge

Certificate of Service

The undersigned certifies that a copy of the foregoing order was served on the attorneys and/or parties of record by electronic means or U.S. Mail on June 24, 2009.

s/Jermaine Creary

Interim Case Manager